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**DECISION**



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*Joseph*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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FILE: B-204303

DATE: December 1, 1981

MATTER OF: Triple "P" Services, Inc.

**DIGEST:**

Protest that IFB requirement for bid and performance bonds discriminates against new and small business concerns is without merit since contracting officer has discretion to determine whether need exists for bonding requirement and record shows that bonds were considered necessary to protect the Government from financial loss and to prevent harm to welfare of military personnel.

Triple "P" Services, Inc. protests the allegedly restrictive provisions of invitations for bids (IFB) F08002-81-B-0105 and F38606-81-B-0023, for food service attendants. The IFBs were totally set aside for small business and were issued by the Department of the Air Force for MacDill Air Force Base, Florida, and Myrtle Beach Air Force Base, South Carolina, respectively. Specifically, the protest involves the requirement for a 20 percent bid bond and a 100 percent performance bond. Triple "P" Services requests the removal of the bond requirements from both solicitations. The company did not bid, contending that, as it is a new minority-owned small business, the bonding requirements make participation in the bid process impossible and that, therefore, the requirement discriminates against new and small firms.

Contracting officers have the discretion to determine whether a need exists under Defense Acquisition Regulation (DAR) § 10-104.2 (1976 ed.) for a performance bond requirement in a particular procurement. 52 Comp. Gen. 640, 644 (1973). Although a performance bond requirement may in some circumstances result in a

restriction of competition, it is nevertheless a necessary and proper means of securing to the Government fulfillment of a contractor's obligations under his contract. B-175458(2), June 28, 1972. See also Abbott Power Corporation and United Power, B-183847, October 2, 1975, 75-2 CPD 207. Thus, where the decision to require bonds is found to be reasonable and made in good faith, we will not disturb the agency's determination. Technical Services Corporation, B-195838, December 18, 1979, 79-2 CPD 415.

Here, the Air Force contends that the bond requirements were necessary due to the nature of the contract, and that it was not its intent to discriminate. In this respect, the contracting officer in each case has made a written determination pursuant to DAR § 10-104.2(a) that the bonds are necessary because there exists the potential of severe financial risks and negative consequences in morale and personnel welfare should the contractor fail to perform. The determination also notes that the bonds are required to protect the Government's interest because the contractor will have the use of Government equipment and facilities. These determinations are consistent with DAR § 10-104.2 regarding the justification for requiring a performance bond for nonconstruction services. Also, the requirement for a bid bond is reasonable in circumstances where, as here, a performance bond is a condition of award. See DAR § 10-104.1(g).

In any event, the record shows that the 13 bidders on the MacDill AFB solicitation, and the 10 bidders on the Myrtle Beach solicitation, were all certified as small business firms. It appears, then, despite the argument of Triple "P" Services, that the bond requirements did not discriminate against small businesses.

The protest is denied.

*for*   
Comptroller General  
of the United States